

2682

No. 2622.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

H. C. AMES,

Plaintiff in Error,

vs.

JERRY SULLIVAN,

Defendant in Error.

Error to the District Court for the District of Alaska,
Second Division.

**SUPPLEMENTAL BRIEF OF
DEFENDANT IN ERROR.**

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Filed this.....day of July, 1916.

....., Clerk.

By.....Deputy Clerk.

The James H. Barry Co.,
San Francisco

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F. D. Monckton,

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In answer to the Reply Brief of Plaintiff in Error on the question of the validity of the Act of the Legislature of Alaska, Defendant in Error presents the following:

The law, to amend which the Act of the Alaska Legislature referred to in Plaintiff in Error's Reply Brief was passed, was not a general law, but a law applicable only and peculiar to the Territory of

Alaska. Such a law, under the enabling act, the Alaska Legislature had the right to amend or repeal.

By the enabling act, which created the Legislature of the Territory (37 Stat. at L. 512), the Legislature was given the power to pass laws "not inconsistent with the Constitution and Laws of the United States, but no law shall be passed interfering with the primary disposal of the soil."

If the Act in question does not "interfere with the primary disposal of the soil" it is a valid Act of the Legislature.

This same provision was drafted into the enabling acts of the Territories of Arizona and Oklahoma. The Supreme Court of Arizona, in construing the phrase, "but no law shall be passed interfering with the primary disposal of the soil," says:

"The primary disposal, it is needless to say, is the disposal of it by the government when it parts with its title. The Legislature has the power to determine and fix by what tenures lands in the territory shall be held and under what forms titles shall pass and who shall be heirs at the death of the proprietor, and to pass other like laws. The purpose of the organic act was to transfer from Congress to the Territorial Legislature the power that Congress had to pass laws for the people of the territory, upon all rightful subjects of legislation. The Territorial Legislature is substituted for Congress and clothed with the power of Congress. . . . That Congress had the power to pass an Act providing for the exercise of the power of eminent domain in the Territory, none

will question. That it has delegated this power to the Territorial Legislature we think is quite clear."

Oury v. Goodwin, 26 Pac., 376 (Ariz.).

See also:

Topeka Commercial Security Co. v. McPherson, 54 Pac., 489 (Okl.).

Respectfully submitted.

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